DOCUMENT RESUME

ED 427 905 RC 021 801

AUTHOR Warner, Linda Sue
TITLE Education and the Law: Implications for American Indian/Alaska Native Students.
PUB DATE 1999-00-00
NOTE 29p.; Chapter 3 in: "Next Steps: Research and Practice To Advance Indian Education"; see RC 021 798.
PUB TYPE Information Analyses (070) -- Reports - Descriptive (141)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Alaska Natives; *American Indian Education; American Indians; *Court Litigation; Courts; *Educational Legislation; Elementary Secondary Education; Equal Education; Federal Indian Relationship; *Federal Legislation; In Loco Parentis; *School Law; Student Rights; Trust Responsibility (Government)
IDENTIFIERS *Supreme Court

ABSTRACT

This chapter provides an overview of federal education case law and legislation. Currently, there is no Supreme Court education case law applicable specifically to American Indian students. Following brief descriptions of categories of jurisdiction and the structure of the federal court system, the overview summarizes Supreme Court case law applicable to all students and examines potential implications for American Indian students, where applicable. Case law in education falls into the following general areas: (1) discipline (corporal punishment, due process); (2) curriculum (protection of freedom of religion, English-as-a-second-language instruction for limited-English speaking students); (3) student and teacher right of free speech; (4) tort law (responsibility and negligence in education, "in loco parentis" issues, extent of school liability); (5) equity (educational discrimination, integrated facilities, equal educational opportunity); (6) special education (rights of disabled children); (7) finance (equality in school funding); and (8) compulsory attendance. Nineteen federal legislative acts are summarized that provide the legislative foundation of American Indian education. Contains references in endnotes. (SV)

CHAPTER 3

Education and the Law
Implications for American Indian/ Alaska Native Students

LINDA SUE WARNER[1]

The right to an education is not a federal right; no references to education are found in the U.S. Constitution. As a result, education is considered a state responsibility. The federal government assumes responsibility for education of American Indian/ Alaska Native[2] students through the Bureau of Indian Affairs (BIA) and through education legislation that targets federally recognized tribes.

This chapter provides an overview of federal education case law and legislation. Case law references are U.S. Supreme Court decisions, except as noted. The chapter further discusses the doctrine of *in loco parentis* and its potential applicability for Indian tribes. The overview summarizes general case law applicable to all students. Interpretations with specific implications for American Indian students are included where relevant. Currently, there is no Supreme Court education case law applicable specifically to American Indian students.

In April 1998 the Central Section Coordinator for the Committee for Native American Rights sent a memorandum to all schools in

California with American Indian mascots, nicknames, or logos.[3] The memorandum advised the schools that a lawsuit against the Los Angeles School District had been upheld in federal district court. Referring to this landmark decision, the committee invited all California schools with American Indian mascots or nicknames to "reconsider" their stances. Although the decision is limited to the jurisdiction of the federal district court where it was delivered, other district courts may eventually cite this ruling as precedence. At this writing, the plaintiffs had not decided whether to appeal the case. Only U.S. Supreme Court decisions become "the law of the land," and the mascot issue is not slated for Supreme Court review at this time.

School Law and the U.S. Legal System

JUDICIAL SYSTEM

There are 50 state court systems, a court system for the District of Columbia, and a federal court system. Each court within a system is identified by its jurisdiction. Jurisdiction often refers to the geographic area over which a particular court has authority. Jurisdiction refers to the power of a court to adjudicate a dispute. To have the power to order a defendant to do anything (or refrain from doing anything), a court must have personal jurisdiction over the defendant.

Jurisdiction alludes to the extent of power a court has over certain subject matter or a particular kind of dispute. These are some of the more common classifications of subject matter jurisdiction:

- **Limited or special jurisdiction.** A criminal court of limited jurisdiction cannot take a noncriminal case.
- **General jurisdiction.** A state court of general jurisdiction can handle any case that raises state questions (state constitution, state statutes, or state common law).
- **Exclusive jurisdiction.** An example of exclusive jurisdiction is juvenile court.
- **Concurrent jurisdiction.** An example of concurrent jurisdiction is family court and county court, which have jurisdiction to enforce a child custody order.
- **Original jurisdiction, trial court, or court of first instance.** The first court to hear and decide a case. This court may overlap with other designations of jurisdiction.
- **Appellate jurisdiction.** This court can hear appeals from lower tribunals. An appeal is a review of what a lower court or agency has done to determine if there was any error. Sometimes, a party can appeal to

This example accentuates an Indian education issue: the breadth of education case law at the Supreme Court level is minimal. Yet the existing education case law is applicable to Indian students in public and tribal schools. This chapter reviews briefly the Supreme Court cases that serve as the primary basis for education policy and regulation. Also reviewed is education legislation that targets American Indian populations.

School law, as many specialized fields in law, requires a general understanding of the legal system in this country (see box below). This general understanding can be applied to schools serving American Indian populations. It is important to note that schools serve

the appellate court as a matter of right; in other kinds of cases, the appellate court has discretion as to whether it will hear the appeal.

STATE COURTS

Depending on the state, there may be one or more levels of trial courts that hear disputes, determine case facts, and make initial determinations or rulings. These are courts of original jurisdiction. State courts may also review cases initially decided by an administrative agency. State courts have variously configured appellate courts based on the state's constitution. Case law specific to states is not reviewed in this work because of its limited applicability to all Indian students.

FEDERAL COURT SYSTEM

The federal court system, like those of the states, consists of two basic kinds: courts of original jurisdiction (trial courts) and appellate courts. The basic federal trial courts are U.S. district courts. There are about 100 districts, including at least one for every state, the District of Columbia, Guam, the Virgin Islands, and Puerto Rico. Specialized courts include the U.S. Tax Court, U.S. Claims Court and U.S. Court of International Trade.

Appeals courts have two levels: middle appeals and final appeals. Primary courts at the middle level are U.S. courts of appeals: eleven comprising groups of states and territories, with a twelfth for the District of Columbia. Their primary function is to review the decisions of federal courts of original jurisdiction.

The federal court of final appeals is the U.S. Supreme Court; it provides the final review of decisions of all federal courts and federal agencies. The Supreme Court may also review state court decisions that raise questions involving the U.S. Constitution or a federal statute. The Supreme Court does not hear every case presented to it.

primarily a state function, and each state organizes and supervises education as its constitution and statues allow. The Tenth Amendment to the U.S. Constitution provides the basis for state control: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[4]

Case law is not the only source of law. Constitutions, statutes, ordinances, and regulations are also sources for education law. The legislative branch of government is responsible for passing laws. Citizens are more likely to be aware of case law than legislation because of the media attention to court opinions at all levels. The function of the courts is to resolve or adjudicate disputes by interpreting and applying applicable constitutions, statutes, ordinances, and regulations. Suppose a dispute comes before a court and no statutes, ordinances, regulations, or constitutional provisions govern the facts of the dispute. The judge will rely on prior opinions in which the court has established rules for this type of dispute. If no such opinions exist, the judge may be forced to create new rules. Such judicially created rules are referred to collectively as *common law*. Judges create common law in their written opinions.

Trust Responsibility

When case law involves American Indian individuals or tribes, it is important to understand the federal government's trust responsibility to tribal entities. Case law involving the BIA is handled by the Department of Interior's Solicitor's Office. If the matter goes to court, the Department of Justice may represent the BIA. Both Interior and Justice have responsibilities to other government agencies. Conflict of interest specific to Indian tribes is not unusual within the government. The Supreme Court has made it clear that, in such circumstances, tribes cannot be favored.[5] Tribes cannot be relieved of the res judicata[6] effect merely because the government has represented both the tribes and those competing with them.[7] While the trust responsibility for education has been debated and/or ignored by executive priority over the years, the courts have supported education for American Indians. The courts have asserted in some opinions that while no legal obligation can be found in treaties, the federal government's historical moral obligation for education takes

precedence.[8]

Jurisdiction in Indian country is determined by a complex mixture of factors including the existence or nonexistence of applicable specific federal jurisdictional or regulatory statutes governing the issue. For example, in a 1985 case, the Supreme Court held that a non-Indian party could sue in federal court under federal Indian law to contest a tribal court's authority to exercise jurisdiction over a civil dispute.[9] However, non-Indian individuals seeking to invoke federal court jurisdiction must first exhaust all tribal court remedies before proceeding. This decision helped establish the relationship of tribal and federal courts for cases involving non-Indians.

Despite the history of Indian/non-Indian affairs, the number of court cases that specifically address Indian education is nearly nonexistent. However, this may correlate to the relatively small number of federal laws that specifically address education issues. School officials need a basic understanding of school law to make informed decisions. Case law and legislation form the basic framework for decision making in schools.

Case Law

Case law in education falls into the following general areas: discipline, curriculum, free speech, tort law, equity, special education, finance, and compulsory attendance. Case law at any level is bound by the jurisdiction of the court; comparable jurisdictions may have conflicting rulings in case law. This section highlights education case law at the U.S. Supreme Court level. These rulings apply to all schools, but some carry additional implications for American Indians.

Discipline. The 1977 Supreme Court case *Ingraham v. Wright*[10] considered whether corporal punishment constituted "cruel and unusual punishment" as prohibited by the Eighth Amendment to the Constitution. In its decision (five to four), the Court ruled paddling does not require Eighth Amendment protections. The court ruled that paddling neither violated any substantive rights nor caused any student to suffer any grievous loss. Requiring notice and a hearing for every corporal punishment case would, according to the Court, "significantly burden the use of corporal punishment as a disciplinary measure." Most states have laws prohibiting corporal punish-

ment, and even in states without such laws, school officials often discipline students without the use of corporal punishment. Federal and tribal schools typically prohibit the use of corporal punishment.

The due process clause of the Fourteenth Amendment was found to apply to students in *Goss v. Lopez,*[11] a 1975 Supreme Court case. Nine public school students in Columbus, Ohio, had been suspended from school for up to 10 days for various misconducts connected with student unrest. None had been given the benefit of a hearing. The Court reasoned that students have two protections under the constitution: property interest in a free education and liberty interest in a freedom from injury to the students' reputation. The Court found that students should receive at least

- oral or written notice of the charges, and if the student denies the charges, then
- a summary of the evidence against the student, and
- an informal opportunity to present his or her side of the story.

BIA schools and tribally controlled schools have policies and procedures sanctioned by local boards that include due process activities for students alleged to have broken school rules.

Curriculum. Curriculum questions presented to the Supreme Court provide a range of decisions, some touching on other issues such as academic freedom and freedom of speech or press. A 1963 case, *School District of Abington Township v. Schempp,*[12] focused on religious freedom. Students had been required to read at least 10 verses from the Bible, and school authorities required students to recite the Lord's Prayer. The question for the Court centered on the violation of religious freedom as protected by the First and Fourteenth Amendments.[13] The court ruled the required activities violated First Amendment clauses protecting the free exercise of religion and prohibiting government establishment of religion. Further, the ability of a parent to excuse a child from these ceremonies by written note was irrelevant since it did not prevent the school's actions from violating the establishment clause. No case law has tested the use of tribal religious activities in federal or tribal schools.

In *Lau v. Nichols,*[14] non-English-speaking Chinese students in San Francisco brought a class-action suit seeking relief against un-

equal educational opportunities. California state law provided that English should be the basic language of all schools, yet many native Chinese students were unable to understand English. The Supreme Court, relying solely on Section 601 of the *Civil Rights Act* of 1964,[15] found that such discrimination did exist in programs receiving federal financial assistance. The Court indicated that a student "brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic, and cultural background, created and continued completely apart from any contribution to the school system." By requiring English (e.g., state-imposed standards), "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."

The implications of these two cases for American Indian students compel school officials to consider entanglement questions (church and state) and second-language instruction for speakers of Native languages. Given the history of assimilation policies and practices in federal and public schools, particularly in view of the 1990 *Native American Languages Act*, and tribal officials are sensitive to the need to incorporate "Native ways of knowing" throughout the curriculum.

Free speech. Constitutional freedoms for students are fairly new to the Supreme Court. The landmark case on speech is *Tinker v. Des Moines Independent Community School District*.[16] In *Tinker*, the primary issue was protected speech. Students in Des Moines, Iowa, had worn black arm bands to protest the Vietnam War. In the decision, the Court reasoned that wearing an arm band as a political protest is a symbolic act of speech and constitutes a form of "pure speech." The speech or expression was "pure" because it was not accompanied by disruptive conduct. In fact, testimony indicated most other students were apathetic. The court made clear that symbolic speech would not be protected in a case where discipline could not be maintained, distracting from the educational processes. Memorable language from this decision includes the following: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

For schools with American Indian populations, the most relevant language in the *Tinker* case concerns "undifferentiated fear or apprehension of disturbance" and the probability that school administrators will make decisions based on the potential discipline problems. In his decision, Justice Abe Fortas referred to a 1996 circuit court decision: "As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress 'expressions of feelings with which they do not wish to contend.'"[17]

The wearing of insignia or slogans now is usually covered by school dress codes. For school administrators and board members, the prohibition of pins (e.g., "Free Leonard Peltier" buttons) requires comparable attention. Does the wearing of an insignia constitute a disturbance to the educational program? If so, what is the likely extent of such disturbance? The Supreme Court has not reviewed cases involving student dress or appearance.

Tort law. Tort[18] claims require establishing negligence of (1) duty of care, (2) breach of that duty through a negligent act or omission, (3) an injury, and (4) a proximate cause between the breach of the duty and injury. Each qualifier must be present. Negligence is the failure to use the degree of care a person of ordinary prudence and reason would exercise under the same or similar circumstances. Reasonable care, in the context of professional negligence, requires exercising the degree of skill and care ordinarily employed by members of the same profession under similar conditions and in like surrounding circumstances. Thus, an elementary teacher is expected to have knowledge and skills in early childhood development. A college professor, however, is not likely to need knowledge about the development of preschool children in order to perform his or her professional duties; he or she would be judged by standards applicable to a professional teacher of adults. The courts also use as a qualifier the expertise a professional portrays to a community. For example, if a college teacher professed to have specific qualifications in preschool education, the courts would consider those qualifications. As a result, the question of whether the duty has been breached turns on the professional's departure from the standard of care rather than on the event.

Cases alleging tort responsibility have increased in recent years. One of the immediate defenses by school officials in a tort case is the

common law doctrine of *in loco parentis*. *In loco parentis* translates literally as *in place of the parents*. A school official would argue that any decision regarding a student is based on the premise that school officials often act in place of parents. More recently, courts have been asked to address liability issues of schools and school employees for failing to prevent a suicide or failing to provide notice to parents of a student's suicidal tendencies. Recent circuit court cases involving this doctrine concern litigation by parents of a student who has committed suicide. In one instance, the court stated "there is a duty which arises between a teacher or a school district and a student. This duty has previously been recognized by this Court as simply a duty to exercise reasonable care in supervising students while they attend school."[19] In another case, the mother of a 13-year-old student who had committed suicide brought a 1983 civil rights suit and wrongful death action based on the failure of school administrators to prevent the student's suicide.[20] The jury awarded the mother $165,000 in damages. These two cases are regional, yet they provide educators with an understanding of recent decision-making trends.

In the 1975 Supreme Court case *Wood v. Strickland,*[21] school officials used a defense based on common-law tradition and public policy: "School officials are entitled to a qualified good-faith immunity from such liability for damages." In this case, the students had been expelled from school for violating a school regulation prohibiting the use or possession of intoxicating beverages at school or school activities. The students claimed their suspensions violated the due process requirements of the Constitution. The Court's opinion discusses the balance of *qualified* and *absolute* immunity for school officials in detail. The significant discussion of the interference with school administration ends with this comment: "The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgement of school administrators and school board members." Historically, the Supreme Court has been reluctant to intervene in the administration of schools, resulting in a small number of education cases adjudicated in the high court.

Implications for schools serving American Indian students are clear. Negligence will not be tolerated, nor is it defensible. Prior eras, wherein immunity was the first line of defense, are obsolete. The

courts will protect school officials acting in a "reasonable" manner. The doctrine of *in loco parentis* appears to be most useful in a boarding school; however, its weight in a Supreme Court case is yet to be determined. In considering liability, courts also consider the age and maturity of the child and the foreseeability of the incident.

Equity. Equity issues typically pertain to people complaining they have been denied a benefit or suffered a burden unfairly. The legal foundation is the equal protection clause of the Fourteenth Amendment of the Constitution. The Supreme Court has placed the burden of proving differential treatment on the plaintiffs. Plaintiffs must establish that government policies (in this instance, school policies) were driven by discrimination. Once the plaintiffs establish differential treatment, it must next be determined (1) whether the plaintiff or government must bear the burden of proving the adequacy of the justification for differential treatment and (2) whether the differential treatment is in fact justified. A law or policy is presumed unconstitutional unless the government can show that differential treatment is necessary to achieve some compelling state interest. The test for equal protection cases is strict scrutiny.[22]

Without question, the landmark case involving equity is *Brown v. Board of Education of Topeka*[23] and its subsequent rehearings. *Brown* overturned the Supreme Court's *Plessy v. Ferguson*[24] decision by ruling that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Brown* relied heavily on the First, Fifth, and Fourteenth Amendments to the Constitution. This decision has profoundly affected public education and other areas of public policy where the Supreme Court has attempted to adjudicate equal opportunity.[25]

Equal opportunity includes gender as well as racial issues. The most significant gender cases in education have involved access. The importance of education to our democratic society and the relationship of education to our most basic public responsibility were the grounds on which the Court concluded that the opportunity of an education, where the state has undertaken to provide it, is a right that must be made available to all on equal terms.

Special education. In 1988 Supreme Court Justice William Brennan delivered an opinion in *Honig v. Doe.*[26] The judgment directed California to provide services directly to a disabled child because a local agency had failed to do so. This case involved the "stay put" provision of the 1975 *Education of All Handicapped Children Act* (Public Law 94-142). The provision prohibited states or local school authorities from unilaterally excluding disabled children from the classroom due to dangerous or disruptive conduct related to their disabilities during a review of their placement. An earlier case involving the *Education of All Handicapped Children Act* was *Hendrick Hudson District Board of Education v. Rowley.*[27] *Rowley* determined that a state must have a policy that assures all handicapped children the right to a "free appropriate public education" to be eligible for federal funds. The parents had filed suit asking that an interpreter be provided for their child. The school had already provided hearing aids. After lower courts upheld the parents' argument, the Supreme Court ruled the court of appeals and district court had misconstrued the requirements imposed by Congress upon states receiving federal funds.

Two federal district court cases were central to the movement protecting the rights of disabled children; *Pennsylvania Association for Retarded Children (P.A.R.C.) v. Commonwealth of Pennsylvania*[28] and *Mills v. Board of Education of District of Columbia.*[29] These cases were based on equal protection and due process theories. The *P.A.R.C.* case ended with an agreement that provided "access to a free public program." *Mills* provided similar rights to an even broader category. Cases involving handicapped or disabled students are among the most widely litigated cases in education law.

Finance. State school finance systems have been challenged in recent years. Early attempts to use the U.S. Constitution to resolve inequities in funding for public schools were largely unsuccessful. These early attempts focused on the equal protection clause of the Constitution: "No state shall deny to any person within its jurisdiction the equal protection of the laws." Lawsuits claiming that a particular state's school funding formula violated its own state constitutional provision have been more successful. These cases have been based on the strategy that education funding is not fiscally neutral. This strategy was successful in *Serrano v. Priest,*[30] wherein

the California Supreme Court found that the state funding system violated the equal protection clauses of both the U.S. Constitution and the California State Constitution. The *Serrano* case was the impetus for moving this issue to the national agenda.

In *San Antonio Independent School District v. Rodriguez*,[31] the U.S. Supreme Court effectively precluded the use of the federal equal protection clause as a vehicle for school finance reform. In a five to four decision, the Court ruled that the Constitution does not prohibit the government from providing different services in different districts. The key to this ruling is that the Constitution protects the rights of individuals but not school districts. Since *Rodriguez*, school finance reform litigation can be found in nearly half of the state court systems. Systems of allocating state resources for education have been affected either by the threat or reality of school finance litigation.[32]

Compulsory attendance. In matters concerning school attendance, two Supreme Court cases are notable. The 1925 *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*[33] ruling had strong implications for separation of church and state. In this case, a private school in Oregon had sought relief from a 1922 state law requiring parents to send their children "to a public school for the period of time a public school shall be held during the current year" in the district where the child resided. The law pertained to all children between the ages of 8 and 16. Based on a precedent established in *Meyer v. Nebraska*,[34] the Supreme Court noted "the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." The Court added that "rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state." This compulsory education case had no major impact on American Indians because they were not considered citizens of the United States in 1925. In fact, based on voting rights, not all the states considered American Indians citizens until 1946.

Another landmark decision in compulsory education came in 1972. In *Wisconsin v. Yoder*,[35] the Supreme Court ruled that Amish children could not be compelled to attend school to the age of 16 as state law required. Testimony pointed to a basic tenet of Amish faith:

religion pervades all life, and salvation requires living in a church community apart from worldly influence. The Amish objected to public secondary schools because the schools emphasized intellectual and scientific accomplishments, competitiveness, worldly success, and social life. The conflict between worldly and nonworldly values, they argued, would psychologically harm their children. At issue was the violation of the right to free exercise of religion as a result of the compulsory school attendance law. The Supreme Court reasoned that "a way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different." Much of the language in the *Yoder* case has implications for American Indians. By replacing the noun *Amish* with *American Indian*, the reasoning and subsequent judgment in favor of the Amish invites a number of moral and ethical questions regarding the schooling of American Indians.

As indicated throughout, the Supreme Court's docket rarely includes cases with substantial impact for education. For example, Supreme Court decisions deal with dress or appearance, yet there are state and federal district court decisions on these topics. This reflects the Court's continued efforts to leave the administration of schools to those officials charged with education and its general reluctance to get involved in any except the most fundamental constitutional questions. The Supreme Court's *Tinker* decision (which protected students' freedom of speech), as in others, included the following statement: "We express no opinion as to the form of relief which should be granted." This statement is consistent with the Court's pattern of hearing only the most significant education law cases. Typically, certiorari[36] (or Supreme Court review) of education law cases is a small portion of the Court's docket. There are currently no decisions from the Supreme Court specifically referencing the education of Indian children.

Legislation

Norman T. Oppelt divides the history of Indian education into two broad periods: the missionary period (1568-1870) and the federal period (1870-1968).[37] It is during this second period that the majority of the legislation involving Indian students was passed. Federal legislation impacts the education of American Indian students on

several levels. The following pages summarize 19 federal laws that provide the legislative foundation of American Indian education:

- *Snyder Act* (1921)
- *Johnson O'Malley Act* (1934), as amended
- Impact Aid
- *Elementary and Secondary Education Act* (1965), as amended
- *Head Start Program Act* (1965), as amended
- *Indian Elementary and Secondary School Assistance Act* (1968)
- *Indian Education Act* (1972)
- Title IX of the *Education Amendments* (1972)
- *Indian Self-Determination and Education Assistance Act* (1975), as amended
- *Education of All Handicapped Children Act* (1975) and *Individuals with Disabilities Education Acts*, as amended
- *Education Amendments* (1978)
- *Tribally Controlled Community College Assistance Act* (1978), as amended
- *Indian Child Welfare Act* (1978)
- *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments* (1988)
- *Carl D. Perkins Vocational and Applied Technology Education Act* (1990)
- *Native American Languages Act* (1990)
- *Goals 2000: Educate America Act*
- Title IX of the *Improving America's Schools Act* (1994)

Snyder Act.[38] This act granted legislative authorization for the Indian Office. This office was established to provide social, health, and educational services to Indians, specifically those tribes for whom the United States had no specific treaty obligations. The language for the establishment of this office is as follows:

> The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend

such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for general support and civilization, including education.

In the 1920s Commissioner of Indian Affairs Francis E. Leupp continued the federal policy of assimilation for American Indians. By encouraging enrollment of Indian students in public schools, this policy accomplished two things. First, the overwhelming number of non-Indian "peers" pressured these children to discard their own traditions. Second, it reduced the costs of Indian education for the BIA. To carry out this policy, Congress allocated up to $300,000 annually between 1923 and 1929.

Johnson O'Malley Act.[39] The *Johnson O'Malley Act* (JOM), passed in 1934 and reauthorized in 1991, authorizes the Secretary of the Interior to contract with a state or territory to provide to American Indians various services, including education. Thus, it is a funding mechanism for providing schooling to American Indians. The JOM has attempted to increase enrollment in public schools and reduce the efforts of BIA education. In states with large populations of American Indian students, JOM quickly became an added source of federal funds to school districts. Originally, JOM funds were not limited to Indian-specific needs, and many schools deposited the money into their general operating budgets. The actual authority for spending money remained with the fiscal agents at the local school; therefore, a consequence of the original legislation, whether intended or unintended, was minimal individual parent input. However, the current regulations require local Indian parent committee involvement.

Impact Aid.[40] Impact Aid laws passed in 1950 and reauthorized in 1978 and 1991 have been the center of considerable debate over the years. The passage of Impact Aid legislation in 1950 compensated schools for the education of children living on tax-free federal lands. Impact Aid monies are grounded in the government-to-government relationship of the United States and federally recognized tribes. This funding flows to public school districts impacted significantly by the absence of a tax base as the result of district boundaries including nontaxable (specifically trust) land. Indian parents have

input into the application processes for Impact Aid and may individually or collectively use the formal complaint system in dealing with public school districts; however, in many areas, public schools have the ultimate decision-making authority over the usage of these funds. Amendments in 1978 attempted to add Indian-specific provisions to the monies, holding local schools more accountable to Indian tribes and parents of Indian children. A report by a special Senate subcommittee in 1969 documented misuse of JOM and Impact Aid monies. This report and others led to passage of the *Indian Education Act* of 1972.[41]

Elementary and Secondary Education Act.[42] To encourage parental input into curriculum used with Indian students, Congress added a rider to 1965 legislation designed primarily for public school education. The *Elementary and Secondary Education Act* targets public schools to make curricular reform applicable to Indian populations. Because education is a state function, public schools had no obligation to offer programs specifically for Indian children, even in densely populated school districts. This legislation sought to encourage more tribal and parental involvement. It began to fund "special supplementary programs for the education and culturally related needs of Indian students."

Head Start Program Act.[43] This act includes children on federally recognized Indian reservations. It provides formula-driven federal funding for health, education, nutrition, and other social services. Head Start programs are among the most successfully administered educational programs in Indian country.

Indian Elementary and Secondary School Assistance Act.[44] This act authorizes *tribes* to bid for special funding (discretionary aid) for education programs such as demonstration schools or pilot projects for the improvement of educational opportunities. The act seeks to involve Indian parents more meaningfully in the development of educational priorities for their children. The programs supported by this act are conditionally based on consultation with Indian parents and approved by Indian parent committees.

Indian Education Act.[45] This act was, in part, a result of the Senate Special Subcommittee on Indian Education's final report, *Indian Education: A National Tragedy—A National Challenge,* best

known as the Kennedy Report.[46] The act has four major components. Part A provides formula funding for public schools with Indian children; including a 10 percent set-aside for Indian-controlled schools. Part B provides direct grants to Indian tribes, organizations, colleges, universities, state departments of education, and other nonprofit institutions. Grants are to be used for demonstration sites, planning and evaluation, and projects designed for American Indians and Alaska Natives. Part C provides monies for adult education, and Part D established the Office of Indian Education in the U.S. Office of Education, a deputy commissioner of Indian education, and the National Advisory Council on Indian Education.

Title IX of the *Education Amendments* (1972).[47] The first amendment to Title V (now known as Title IX) was a special appropriation to Part B for Indian professional development at the graduate level. Other changes included the addition of gifted and talented programs, Indian preference for employees, eligibility of BIA schools for formula grants (originally limited to public schools), and authorization for the BIA director to recommend policy on all programs for Indians funded by the U.S. Department of Education.

Two other federal statutes, Title IX of the *Education Amendments* of 1972 and Section 1983 of the *Civil Rights Act* of 1964,[48] provide all students with potentially powerful tools for protection and redress from sexual harassment and abuse by school employees. The most notable court ruling on the application of Title IX is the Supreme Court's 1992 decision in *Franklin v. Gwinnett County Public Schools*.[49] This is a landmark case because the court entitled a female high school student who had been subjected to sexual abuse by a teacher to receive monetary compensation for damages under Title IX. Under Section 1983, the violation of a student's rights evokes protection and substantive due process under the Fourteenth Amendment. To demonstrate liability the plaintiff must show that the school knew of a pattern of conduct on the part of the school official. This is often a difficult standard to meet. Instances of sexual harassment have been reported more in recent years, and some state courts have waived statutory time limits on filing claims involving minors. Administrators and school boards serving populations of American Indian students would, no doubt, experience the financial responsibility from such a civil action.

Indian Self-Determination and Education Assistance Act.[50] The *Indian Self-Determination and Education Assistance Act* (reauthorized in 1991) authorizes tribes to contract with the federal government to administer schools for Indian children. Section 2(b)(3) emphasizes that parental and community control of the educational process is crucially important to Indian people. Part A, Education of Indians in Public Schools, addresses parental input in Section 5(a):

> Whenever a school district affected by a contract has a local school board not composed of a majority of Indians, that parents of the Indian children enrolled in the school/s affected shall elect a local committee from among their number. Such committee shall participate fully in the development, and shall have the authority to approve/disprove programs to be conducted under such contract/s.

The language of this act underscores Congress's intent to "promote maximum Indian participation in the government and education of Indian people."[51] While the focus is not education, the act marks the beginning of an era when Congress began emphasizing and reestablishing tribal sovereignty. Tribal sovereignty is a prerequisite for the establishment of policies and programs that reflect the wishes of local communities (e.g., parents in the educational programs designed for their children).

Education of All Handicapped Children Act[52] and the ***Individuals with Disabilities Education Act* (IDEA).**[53] These two acts address all students but have special significance for American Indians. IDEA assures parents of students with handicaps the right to participate in the assessment and program planning processes for their children. For the first time, all parents are partners with professionals in the decision-making process. Education researchers Eleanor Lynch and Robert Stein have found that language is a major inhibitor to this shared decision making.[54] Many language-minority students are from homes where English, the language of Individual Education Programs (IEP), is not spoken. Problems with facilitating full participation by Indian parents in decision making about their children's educational programs have been compounded by the lack of Indian personnel in special education and the

cultural bias of assessment tools. Appropriate student assessment and placement into programs are ongoing concerns of Indian educators. Despite recent changes, a disproportionate number of Indian students continue to be identified for special education classes. For years, support has been widespread for the notion that minority-language students are likely to be slow learners, due either to low mental ability or disadvantages imposed by their language handicap. This act is another example of legislation not originally targeted to the needs of Indian children that has nevertheless had significant impact.

Congress enacted IDEA, in part, in response to two well-publicized federal court cases: *Mills v. Board of Education of District of Columbia*[55] and *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*.[56] While these were regional cases, the decisions had broad implications for students in other areas. In both cases, the courts found that children with disabilities had been denied access to public schools because of their disabilities. IDEA defines the types of disabilities covered and limits coverage to educationally disabled children. IDEA is the funded mandate in a series of three laws Congress enacted to protect disabled students. Section 504 of the *Rehabilitation Act* of 1973 and the *Americans with Disabilities Act* (ADA) of 1990 are antidiscrimination laws that overlap to protect the rights of persons with disabilities. Each successive law was more encompassing. All individuals covered under IDEA are also covered by Section 504 and ADA. However, all individuals who qualify for Section 504 and ADA coverage may not qualify for special education under IDEA. IDEA differs from previous legislation because it requires parents of a disabled child to work with school officials to shape an educational experience specific to the child.

***Education Amendments* (1978).**[57] Congress passed several Education Amendments in 1978. One of the riders was directed at schools operated by the BIA. In response to the increased awareness in Indian country of the needs of Indian students and the limited ability of the BIA to respond to local concerns, this rider authorizes parental involvement by redefining the role of the local school board. Local boards of BIA schools have more specific authority over general decision making at the schools, including a voice in the hiring of school officials, specifically administrative positions.

In practice, the authority relinquished to parental school boards is determined by the local school administrator and/or local school superintendent (education program administrator). For some schools, decision making is more participatory than others since fiscal accountability still resides with the administrators. While the intent of the rider was to provide local boards with a larger role in the control of local schools, it is not guaranteed. The amendment narrowed the focus of the BIA, establishing an official policy of facilitating "Indian control of Indian affairs in all matters relating to education."

Tribally Controlled Community College Assistance Act.[58] The *Tribally Controlled Community College Assistance Act* of 1978 authorizes Congress to provide funding for higher education institutions controlled by tribal governments. Currently, there are 24 tribal-government-controlled colleges and 7 other tribal colleges with other sorts of governing arrangements.

***Indian Child Welfare Act* (ICWA).**[59] This act was designed to protect the integrity of tribes and the heritage of Indian children by inhibiting the practice of removing these children from their families and tribes to be raised as non-Indians.[60] Under the act, state courts have no jurisdiction over adoption or custody of Indian children domiciling or residing within the reservation of their tribe, unless some federal law (such as Public Law 83-280, which gave several states criminal and civil court jurisdiction over Indians) confers such jurisdiction. The act has been held to preempt a state rule that would have shifted the domicile of an abandoned Indian child from that of the parent on the reservation to his would-be adoptive parents off the reservation.[61] As a result of ICWA, state courts have no jurisdiction over children who are wards of a tribal court, regardless of domicile or residence. Jurisdiction of these cases lies exclusively with the tribe. State courts have some jurisdiction over adoption and custody of Indian children not domiciling or residing on their tribe's reservation, but this jurisdiction is subject to important qualifications. For example, in any proceeding for foster care placement or termination of parental rights, the state court, "in the absence of good cause to the contrary" and in the absence of objection by either parent, must transfer the proceedings to tribal court upon the petition of either parent, the child's Indian custodian, or the tribe. The tribe may decline such a transfer.[62]

While not specifically addressing education, the law reinforces other legislation. Indian parental rights are, for the most part, subjugated to the wishes of the tribe in matters of welfare for a child, including education.[63] The primary consideration is the opportunity for the child to remain cognizant of the culture (and language) to protect the identity of the group and ultimately, the individual. The *Indian Child Welfare Act* came under attack in the 1998 Congress. The *Adoption Promotion and Stability Act*[64] contained language that would seriously weaken the ICWA. The Senate also introduced similar legislation. The passage of such legislation would reduce recent efforts to allow more control by tribes in decisions affecting tribal children.

Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments.[65] The *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments* (1988) address the specific educational needs of Indian communities. It strengthens parental involvement in Indian schools by authorizing resources. Prior to these amendments, an Indian school board could contract through the tribe to operate a school; however, layers of fiscal management still diverted money from local school operations. This act authorizes the BIA to provide outright grants to tribally controlled schools. Local school boards have more autonomy to make curricular and operational decisions.

Carl D. Perkins Vocational and Applied Technology Education Act.[66] This act provides vocational education opportunities for Indians through competitive, discretionary project grants. Discretionary funding is often targeted by Congress when budget cuts are required.

Native American Languages Act.[67] On October 30, 1990, President Bush signed the *Native American Languages Act*, which Congress had passed to protect the "status of the cultures and languages of Native Americans [as] unique." It states the United States "has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages."[68] Congress makes it a policy of the United States to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American Language."[69] Finally, the act

emphasizes that "the right of Native Americans to express themselves through the use of Native American language shall not be restricted in any public proceeding, including publicly supported educational program(s)."[70]

The implications for Indian educators are obvious. From a general administrative perspective, the act advances the policy of Indian self-determination, particularly as it pertains to the tribal governing authority. Second, it is a stark reversal of the assimilation practices that discouraged teaching Native languages.

Goals 2000: Educate America Act.[71] This act provides funds for schools as they work to meet the National Education Goals. Set-aside funds are authorized for BIA and tribal schools. This legislation connects the U.S. Department of Education, specifically the Office of Educational Research and Improvement (OERI), to activities in Indian education. Tribal and federal schools have adopted goals that meet or exceed the National Education Goals.

Title IX of the *Improving America's Schools Act* (1994).[72] Title IX includes numerous Indian-specific programs, most significantly the Formal Grant Program to Local Educational Agencies in Part A. The formula grant program provides supplemental funds to local educational agencies to reform current school programs serving Indian children, thereby better meeting their special needs and ensuring they can meet state and national education standards. There are a number of special projects under Title IX as well. These include grant programs for the development of demonstration projects to improve achievement of Indian children; professional development of Indian educators; fellowships for Indian students; gifted and talented programs; adult education; and grants to tribes for education, administrative planning, and development. While these special projects are provided by legislation, they are not always included in congressional appropriations.

This summary of legislation is not all-inclusive of legislation that impacts American Indians, nor does it include all legislation that impacts education. It is, however, representative of key legislation and subsequent educational policy affecting American Indian elementary and secondary students. In the absence of Supreme Court decisions on the rights of American Indian students in schools, legislation forms a significant base for decision making.

Conclusions: Indian Education and the Law

Recent data on Indian students in this country show 398,484 American Indian and Alaska Native students attend school (K-12). About 87 percent attend public schools. Indian tribes and tribal organizations operate schools that serve about 16,500 students, and in 1997 the BIA-operated schools serving 27,000 Native students. Additionally, another 10,352 reportedly attend private schools.[73] Based on these statistics, the vast majority of American Indian students attend state-supported schools. As a result, case law impacting discipline, curriculum, free speech, tort law, equity, special education, finance, and compulsory attendance (as reviewed above) has the most direct effect on these students.

Case law rarely addresses education and even less frequently concerns Indian students at the local level. Legislation affecting Indian students often is incorporated in legislation written for all students, with amendments for American Indians. The section on legislation reviewed laws intended for all students that included provisions for Indian students. Further, this section reviewed legislation that targeted American Indian education programs. J. E. Silverman[74] asserts that tribal control over education has received more federal deference than the interests of other parents in this country, yet the actual practice of including parents (or tribes) in decision making is remarkably rare. Indian parents have only recently been provided opportunities to be involved in decisions affecting their children. Even today in boarding schools, parents typically acquiesce to the doctrine of *in loco parentis*.[75] Federal schools tend to route grievances through the federal system, and students (and parents) have been reluctant to use the federal court system.

In recent years, many states have passed legislation that allows for the formation of charter schools. Charter school designation has significant financial implications for Indian schools. Roughly a dozen states have legislation providing for charter schools, and there appears to be some backlash in states where Indian schools also have charter status. Suits addressing these issues are currently in federal and state lower courts.

Educators need to have a general understanding of education case law. The language of Supreme Court decisions is useful in evaluating the parameters of specific situations encountered during the course

of a school day, because these cases are used as precedents for all subsequent court opinions. Students in schools governed by tribal contract or grant have the same rights and responsibilities as students in state-supported schools.

While there are no Indian education decisions from the Supreme Court, the education cases decided by the Court apply to all students regardless of the type of school board governance. Federal legislation, subsequent amendments, and all regulations and policies contribute to the current environment of Indian education law. The scope of both case law and legislation, while narrow, provides educators with a philosophical foundation for decision making. For tribal schools, the philosophy and goals often include Native culture and language.

The National Indian Education Association's recent Indian Education Impact Week[76] featured Representative Dale E. Kildee, a Michigan Democrat and cochair of the House Native American Caucus. Representative Kildee, a recognized advocate of Indian rights, cited a section of the U.S. Constitution referencing the sovereign status of Indian people. He noted that each congressman is required to take an oath to uphold the Constitution.

Tribal sovereignty is often under legislative attack. Advocacy for Indian children can be found in national organizations, like the National Indian Education Association, which seek to influence legislation but rarely use the federal court system. The Native American Rights Fund, a highly visible advocate for Indians in the court system, offers a series of monographs and training on education law designed for tribal education offices.[77]

Case law and legislation affecting American Indian students will continue to increase as more American Indian parents and educators become actively involved in policy and practice at the local level. Further, the advocacy of these parents and educators at the federal level continues to impact legislation.

Notes

1. Linda Sue Warner (Comanche) teaches Education Leadership and Policy Analysis at the University of Missouri-Columbia.

2. From this point, the term *American Indian* is inclusive of Eskimos, Aleuts, and other Alaska Natives.

3. Joe R. Talaugon to all California schools with American Indian mascot names and logos, Memorandum, 7 April 1998.

4. U.S. Constitution, amend. 10.

5. *Nevada v. United States*, 463 US 110, 127 (1983).

6. *Duhaime's Law Dictionary* (http://wwlia.org/diction.htm) defines res judicata "as a matter that has already been conclusively decided by a court."

7. *Arizona v. California*, 460 US 605, 626-28 (1983).

8. *[Northwest Bands of] Shoshone Indians v. United States,* 324 US 335 (1945).

9. *Nations Farmers Union Insurance Company v. Crow Tribe*, 471 US 845 (1985).

10. *Ingraham v. Wright*, 430 US 651 (1977).

11. *Goss v. Lopez*, 419 US 565 (1975).

12. *School District of Abington Township v. Schempp*, 374 US 203 (1963).

13. The First Amendment of the U.S. Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

14. *Lau v. Nichols*, 414 US 563 (1974).

15. *Civil Rights Act* (1964), 42 *U.S.C.* 2000d (amended 1986).

16. *Tinker v. Des Moines Independent Community School District,* 393 US 503 (1969).

17. *Tinker*, at 511, quoting *Burnside v. Byars*, supra, at 749.

18. *Merriam-Webster's Collegiate Dictionary* (10th ed.) states, "A tort is a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction."

19. *Brooks v. Logan*, 127 ID 484, 903 P2d 73 (ID 1995).

20. *Wyke v. Polk County School Board,* 129 F3d 560 (11th Cir 1997).

21. *Wood v. Strickland,* 420 US 308 (1975).

22. *Strict scrutiny* is used when the criterion of classification and differential treatment is race or ethnicity. The government must justify its policy by showing that this test is necessary to the accomplishment of a compelling state purpose. Except regarding certain affirmative action policies, the government (school) rarely meets this requirement. *Substantial relation* is the second level of this test. When it is admitted or demonstrated government has classified on the basis of gender, this test places the burden of justification on

the government. Gender-based classifications are upheld only if the government can demonstrate the classifications are substantially related to the achievement of an important government purpose. The third level of the test is *rational basis*. Classifications based on characteristics other than race, ethnicity, or gender require the rational basis test. This test places the burden on the plaintiff to show that differential treatment is wholly unrelated to any legitimate state goal.

23. *Brown v. Board of Education of Topeka*, 347 US 483 (1954).

24. *Plessy v. Ferguson*, 163 US 537 (1896).

25. The equal protection clause does not prohibit policies that discriminate or segregate purely as an unintended by-product. All intentional discriminatory action is de jure and therefore unconstitutional, but unintended discrimination is de facto. De facto discrimination is not unconstitutional. For school officials, answering the following question would determine if they are in violation of the Fourteenth Amendment: Suppose the adverse effects of this policy fell on Whites instead of American Indians. Would the decision/policy be different? If the answer is yes, the policy/decision was made with discriminatory intent. This is the *reversing of groups* test.

26. *Honig, California Superintendent of Public Instruction v. Doe*, 484 US 305 (1988).

27. *Hendrick Hudson District Board of Education v. Rowley*, 458 US 176 (1982).

28. 334 F. Supp. 1257 (E.D. PA 1971), 343 F. Supp. 279 (E.D. PA 1972).

29. 348 F. Supp. 866 (D. DC 1972).

30. *Serrano v. Priest*, 487 P2d 1241 (1971).

31. *San Antonio Independent School District v. Rodriguez*, 411 US 1 (1973).

32. VanSlyke, Tan, and Orland, *School Finance Litigation*, 9.

33. *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 US 510 (1925).

34. *Meyer v. Nebraska*, 262 US 390 (1923).

35. *Wisconsin v. Yoder*, 406 US 205 (1972).

36. *Duhaime's Law Dictionary* (http://wwlia.org/diction.htm) defines a writ of certiorari as "a form of judicial review whereby a court is asked to consider a legal decision of an administrative tribunal, judicial office, or organization (e.g., government) and decide if the decision has been regular and complete or if there has been an error of law. For example, a certiorari may be used to wipe out a decision of an administrative tribunal made in violation of the rules of natural justice, such as a failure to give the person affected by the decision an opportunity to be heard."

37. See Oppelt, *Tribally Controlled Indian College.*

38. *Snyder Act* (1921). Public Law 67-85.

39. 48 Stat. 596, 25 *U.S.C.* 452-457.

40. *Federally Impacted Aid Areas Act* (1950). Public Law 81-874 and

Public Law 81-815, as amended. Funds provide assistance for operation and construction of schools.

41. *Education Amendments* (1972). Public Law 92-318, as amended.

42. *Elementary and Secondary Education Act* (1965). Public Law 89-10, as amended.

43. *Head Start Program Act* (1965), 42 *U.S.C.* 105.

44. *Indian Elementary and Secondary School Assistance Act* (1972). Title IV of Public Law 92-318.

45. *Indian Education Act.* Title IV of *Education Amendments* (1972). Public Law 92-318, as amended.

46. Senate Special Subcommittee, *Indian Education.*

47. 20 *U.S.C.A.* 901 090, as amended; 20 *U.S.C.A.* 1681-88.

48. *Civil Rights Act* (1964), 42 *U.S.C.A.* § 1983.

49. *Franklin v. Gwinnett County Public Schools*, 503 US 60 (1992).

50. *Indian Self-Determination and Education Assistance Act.* Public Law 93-638, 1975; Title III, Public Law 100-472, 1988; Title IV, Public Law 103-413, 1994.

51. See H.R. Report No. 1600, 93rd Congress, 1st Sess 1 (1974).

52. *Education of All Handicapped Children Act* (1975). Public Law 94-142.

53 The original *Individuals with Disabilities Education Act* (Public Law 101-476) was reauthorized in 1997 as Public Law 105-17.

54. Lynch and Stein, "Parent Participation by Ethnicity," 105-11.

55. *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D. DC 1972).

56. *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 343 F. Supp. 279 (E.D. PA 1972).

57. Public Law 95-561, as amended.

58. Public Law 98-192, as amended.

59. *Indian Child Welfare Act* (1978), 25 *U.S.C.* 1903.

60. Compare with *Wakefield v. Little Light*, 276 MD 333, 347 A2d 288 (1975).

61. Matter of Adoption of Halloway, 732 P2d. 962 (Utah 1986).

62. 25 *U.S.C.A.* §1911(b). States are required to give tribal adoption and custody orders full faith and credit.

63. See Thompson, "Protecting Abused Children."

64. *Adoption Promotion and Stability Act*, H.R. 3268. Also see *Indian Child Welfare Act* Amendments (1977), H.R. 1082 and Senate Bill 569.

65. *Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments* (1988), Public Law 100-297, as amended.

66. Public Law 101-392.

67. Title I of Public Law 101-477, *Tribally Controlled Community College Reauthorization Act* (1990).

68. Ibid., 1153.

69. Ibid., 1155.

70. Ibid., 1155-56.

71. *Goals 2000: Educate America Act*, 20 *U.S.C.* 5843.

72. 20 *U.S.C.* 6301 et seq., Public Law 103-382.

73. See U.S. Department of the Interior, *Fingertip Facts.*

74. Silverman, "Miner's Canary," 1019-46.

75. Briscoe, "Legal Background," 24-31.

76. National Indian Education Association, *"NIEA Co-hosts,"* 17.

77. See the Native American Rights Fund Web site: http://www.narf.org/education/educationlaw.htm

Bibliography

Briscoe, L. S. "The Legal Background of *in loco parentis* as Applied to the Education of Indian Children." *Emergent Leadership* 4(2): 24-31 (1980).

Lynch, Eleanor W., and Robert C. Stein. "Parent Participation by Ethnicity: A Comparison of Hispanic, Black and Anglo Families." *Exceptional Children* 54(2): 105-11 (1987).

National Indian Education Association (NIEA). "NIEA Co-hosts First Indian Education Impact Week." *NIEA Newsletter*, Spring/Summer 1998, 17.

Oppelt, Norman T. *The Tribally Controlled Indian College: The Beginnings of Self-Determination in American Indian Education.* Tsaile, AZ: Navajo Community College Press, 1990.

Senate Special Subcommittee on Indian Education. *Indian Education: A National Tragedy, A National Challenge.* 91st Congress, 1st sess., 1969. S. Rept. 91-501.

Silverman, J. E. "The Miner's Canary: Tribal Control of American Indian Education and the First Amendment." *Fordham Urban Law Journal* 19 (1992): 1019-46.

Thompson, E. "Protecting Abused Children: A Judge's Perspective on Public Law Deprived Child Proceedings and the Impact of the Indian Child Welfare Acts." *American Indian Law Review* 15(1): 1-114 (1990).

U.S. Department of the Interior, Office of Indian Education Programs. *Fingertip Facts.* Washington, DC: U.S. Department of the Interior, 1997.

VanSlyke, Dore, Alexandra Tan, and Martin Orland. *School Finance Litigation: A Review of Key Cases.* Washington, DC: The Finance Project, 1994.

Warner, Linda Sue. "The Legal Framework for Parental Involvement in Indian Education." Paper presented at the annual meeting of the American Educational Research Association, New Orleans, April 1994. ERIC Document Reproduction Service No. ED 369 641.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

REPRODUCTION BASIS

☐ This document is covered by a signed "Reproduction Release (Blanket) form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

☑ This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").